IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.293 OF 2006
IN
NOTICE OF MOTION NO.490 OF 2006
IN
B.C.C.C.L.C. SUIT NO.3798 OF 2004
WITH
CIVIL APPLICATION NO.379 OF 2006

Rajabali Dhoodnath Mishra & Anr. ...Appellants
Versus
Smt.Baby Shankar Pansare & Anr. ...Respondents

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Mrs.Shakuntala Joshi with Mr.Ditendra K.Mishra for Appellants.

Mrs.S.M.Poddar for Respondent No.1.

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CORAM: A.M.KHANWILKAR, J.

JULY 6, 2006.

P.C.

1. Heard Counsel for the parties. Perused the relevant documents on record.

2. I find no infirmity in the view taken by the Court below in rejecting the Notice of Motion taken out by the Appellants/Defendants 2 & 3 for the reasons recorded in the impugned Judgment. One

of the reason recorded that the Appellants/Defendants 2 and 3 have indulged in fabrication and forgery of documents, by itself, is a good ground to non-suit the Appellants.

3. Even on merits, I find no substance, for the simple reason that it is not in dispute that the Respondents/Plaintiffs had taken out Notice of Motion No.3370 of 2004 for injunction against the Appellants/Defendants 2 and 3 as well as Defendant No.1 Corporation. That Motion has been allowed by the lower Court by Judgment and Order dated 19th September 2005. The said Judgment and Order was put in issue before this Hon'ble Court by way of Appeal from Order No.1032 of 2005 which has been dismissed on December 13, 2005. The effect of the said injunction is not only restraining the private Defendants 2 and 3 from carrying on any repairs or altering the status of the present premises as also restraining the Defendant No.1 Corporation to grant any permission to repair or reconstruct the suit premises. So long as the said injunction order is continuing, it is too much to expect that the Appellants/Defendants 2 and 3 can be permitted to

move for the relief which is claimed in the present Notice of Motion No.490 of 2006. To put it simply, if this relief as claimed by the Appellants was to be granted, that would be circumventing the order of injunction already granted by the lower Court which is still operating and has been confirmed right up to this Court. In the circumstances, it is not possible to countenance the grievance of the Appellants. Hence, dismissed.

4. This Court has already expedited the hearing of the Suit. In the circumstances, while re-iterating that position, it is observed that the Trial Court may endeavour to dispose of the suit finally by end of June 2007. All questions are left open to be decided on its own merits in accordance with law, uninfluenced by the observations made in the impugned order, or for that matter, the present order.

5. Appeal and the cognate Civil Application disposed of on the above terms.

A.M.KHANWILKAR, J.